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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,404

05/03/2004

Alan Sturt

04800

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23688

7590

03/09/2007

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EXAMINER

SKURDAL, COREY NELSON

ART UNIT

PAPER NUMBER

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/709,404

Applicant(s)

STURT ET AL.

Examiner

Corey N. Skurdal

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-17 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-2, 6-8, 10 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McElfish et al. (US 4,568,117) in view of Ney et al. (US 5,879,041).

Regarding claims 1-2, and 10-11 McElfish et al. discloses a device mounting apparatus suitable for attaching and securing devices having various sizes and shapes in a vehicle comprising in combination: a triangular mounting unit (18) having a first side (38), a second side (32), and a third side (40), the triangular unit being rotatably movable around a center pivot pin (46), said triangular mounting unit being installed in an interior surface (10); the first side surface at 38 complimentary to said interior surface (Figure 1); and a mounting cavity (74) on the second side surface; and a third side having a mounting cavity (66). McElfish et al. does not have storage receptacles, items, or brackets with prongs suitable for inserting into the mounting cavity of the triangular mounting unit, thereby allowing secure attachment of at least one of a desired container, item, or bracket in a vehicle. However, Ney et al. teaches an article holder (10), for use in a vehicle cup holder, on which multiple prongs (30 and 22) can be secured in a cup holder mounting cavity (12), the holder (10) shaped complementary to said mounting cavity and insertable into said mounting cavity. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to use the

beverage container with prongs of Ney et al. with the device of McElfish et al. in order to hold various receptacles such larger cups and beverage containers.

Regarding claim 6 and 14, the modified McElfish et al. device discloses the claimed apparatus wherein the apparatus opens (Figure 2) and closes (Figure 1) around a center pivot pin (46).

Regarding claims 7-8, and 15-16, either of the cavities or prong of the modified McElfish et al. device can be considered to be oriented either horizontally or vertically, depending on how you look at the figures.

3. Claims 3, 9, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McElfish et al. in view of Ney et al. as applied to claims 1 and 10 above, and further in view of Bieck et al. (US 5,839,711).

Regarding claims 3 and 17, the modified McElfish device discloses the invention substantially as claimed but does not have a hook on said third face of the triangular unit. However, Bieck et al. discloses a beverage holder (10) with hook members 20 for securing a beverage in place. Therefore it would have been obvious to one skilled in the art at the time of invention to make the cup holder of McElfish with hook members in order to more securely hold a cup or beverage.

Regarding claim 9, the modified McElfish device discloses the claimed invention wherein hook members (20 of Bieck et al.) are on said third side of the triangular unit, and mounting loops (84 Figure 3, also seen at the center of Figure 2) formed from the lip of the coin holder are located on said second side, effectively satisfying the claims.

4. Claims 4-5, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McElfish et al. in view of Ney et al., as applied to claims 1 and 10 above, and further in view of Wildey et al. (US 5,860,630). The modified McElfish device discloses the claimed invention but does not specifically state the material being a plastic. However, Wildey et al. teaches a container recesses into a vehicle console (18) with various mounting cavities, the device being made from ABS plastic (col. 4 lines 4). Therefore it would have been obvious to one skilled in the art at the time of invention to make the mounting device of McElfish from ABS plastic, effectively satisfying the claims.

#### ***Response to Arguments***

5. Applicant's arguments filed 12/19/2006 have been fully considered but they are not persuasive. Applicant has amended the claims and argued the prior art fails to disclose the claimed invention.

More particularly, Applicant argues that the present invention relates to a device which can be oriented vertically or sloped within a vehicle, and furthermore that the McElfish reference must be used in the horizontal orientation. However, the claims as written do not require the device to be mounted in such a manner. In particular, claims 7, 8, 15, and 16 recite limitations wherein the mounting cavity is "oriented vertically" or "oriented horizontally" but fail to recite how they are oriented with respect to the vehicle. As such, Examiner maintains his rejection based on the ability for one to look at the figures in different orientations, vertically, horizontally, or sloped.

Applicant also argues the combination of McElfish and Ney, citing that there is no motivation to combine the two. However, McElfish clearly teaches a cup holder and Ney clearly teaches an insert to be used with a cup holder, both being with a vehicle.

Applicant further argues that the combination fails to teach providing different brackets to be mounted with the mounting cavity. However, as the claims are written, there is only need for "a single desired receptacle, item, and bracket" which is insertable into the mounting cavity (claim 1, lines 11-12), and as such placing the holder of Ney within the cavity of McElfish effectively satisfies the claims.

Applicant also argues the combination of McElfish and Bieck et al., stating that there is no motivation to provide the cup holder cavity of McElfish with the hook members 20 of Bieck et al. However, there is obvious motivation to make a cup holder that is not adjustable into a cup holder that is adjustable to various sized cups, in particular for smaller cups. As such, one would have been motivated to provide McElfish with hooks that adjust to secure smaller sized cups. At the same time, the Ney reference teaches an insert for a cup holder, which increases size of the cavity in which cups are held. One could certainly combine the three references in any order, but would not be restricted to only combine Bieck into Ney. Examiner maintains the rejections in view of McElfish, Ney, and Bieck.

Applicant further argues the combination of McElfish, Ney, and Wildey et al. The Wildey reference simply illustrates what is common in the art: to make internal vehicle components from ABS. Any number of references could be used to teach this, and the

Willey reference is a clear example teaching one to make a component, which is recessed within a vehicle panel from ABS.

Applicant also argues multiple times that there is no teaching or disclosure on "how to eliminate the critical elements of the locking means, the rotational wheel means, or the need for specific direction of rotation" in the McElfish reference. However, Examiner is unsure as to what in the claims necessitates this teaching or motivation. The claims simply state the triangular unit "opens and closes by rotating around a center pivot pin" (claims 6 and 14) and give no indication of why the locking and rotational means of McElfish do not meet the claim limitations.

#### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey N. Skurdal whose telephone number is 571-272-9588. The examiner can normally be reached on M-Th 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE  
SUPERVISOR, PATENT EXAMINER

CNS  
2/26/07